

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Toni Caudle,

Plaintiff,

vs.

John Doe, and Gainsco, Inc., d/b/a
Gainsco Auto Insurance Agency, Inc.,
and d/b/a Gainsco Auto Insurance Co.,
and Charles Humphrey,

Defendants.

Civil Action No.:

NOTICE OF REMOVAL

The Defendant, Gainsco, Inc. more properly MGA Insurance Company, Inc., d/b/a Gainsco Auto Insurance Co., appearing in its own name and that of John Doe pursuant to § 38-77-150 respectfully shows unto the Court as follows:

1. That the above-entitled action was commenced in the Court of Common Pleas for the County of Spartanburg, by the filing of Summons and Complaint on January 24, 2017, and is now pending in that Court.

2. That a copy of the Summons and Complaint was served on the Insurance Commissioner on February 9, 2017.

3. That the action appears to be one for breach of contract and bad faith and also one against John Doe for damages from an auto accident.

4. That at the time this action was filed and at all times thereafter, the Defendant, Gainsco, Inc. and its subsidiary MGA Insurance Company, Inc., d/b/a Gainsco Auto Insurance Co. have been corporations organized and existing pursuant to the laws of the State of Texas. That at the time this action was filed and at all times thereafter, the Defendant, Gainsco, Inc. and MGA Insurance Company, Inc., d/b/a

Gainsco Auto Insurance Co. have maintained their principal place of business in the State of Texas.

5. That at the time this action was filed and at all times thereafter Plaintiff has been a citizen and resident of the State of South Carolina.

6. That the citizenship of John Doe as a fictitious entity does not count for purposes of diversity.

7. That the citizenship of Charles Humphrey does not count because he has not been served. See *Wensil v. E. I. Du Pont de Nemours & Co.*, 792 F. Supp. 447, 447 (D.S.C. 1992). (1441(b) allows removal because the Defendants removed the action to federal court before the South Carolina resident Co-Defendants were served.)

8. That the amount in controversy in the within action exceeds Seventy Five Thousand and No/100 (\$75,000.00) Dollars exclusive of interest and costs as the demand is for actual and punitive damages in an unspecified amount.

9. That this action is one of which the United States District Court has been given original jurisdiction by reason of complete diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332.

10. That the parties to this action are citizens of different states and were citizens of different states at the time this action was filed and at the time of removal.

11. That thirty (30) days have not yet expired since this action became removable to this Court pursuant to the provisions of 28 U.S.C. §1441.

12. That copies of all pleadings, process and orders served in this action are attached and marked as Exhibit "A".

WHEREFORE, the Defendant, Gainsco, Inc. and MGA Insurance Company, Inc., d/b/a Gainsco Auto Insurance Co. pray that the above-entitled action be removed from

the Court of Common Pleas for the County of Spartanburg, State of South Carolina to the United States District Court for the District of South Carolina, Spartanburg Division.

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin

District of S.C. Federal Bar No.: 5828

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: tdomin@clawsonandstaubes.com

Attorney for Gainsco, Inc. and MGA Insurance

Company, Inc., d/b/a Gainsco Auto Insurance

Charleston, South Carolina

February 28, 2017